

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JULIE A MOTT,

Plaintiff,

v.

MICHAEL J ASTRUE,

Defendant.

CASE NO. C12-5380 RJB

ORDER ON REPORT AND
RECOMMENDATION OF THE
MAGISTRATE JUDGE

This matter comes before the court on the Report and Recommendation of the Magistrate Judge. Dkt. 15. The court has considered the relevant records and the remainder of the file herein.

1. Report and Recommendation. On June 6, 2013, U.S. Magistrate Judge J. Richard Creatura issued a Report and Recommendation, concluding that the ALJ did not err in Steps 1 through 4 of the sequential disability evaluation process, but did err at Step 5. Dkt. 15. Judge Creatura concluded that the ALJ erred in determining “that plaintiff was capable of performing other work, and as this finding led to the ultimate determination that plaintiff was not disabled,

1 the ALJ's error was not harmless." Dkt. 15, at 32. Judge Creatura recommended that the case be
2 reversed and remanded for further consideration. Dkt. 15, at 32.

3 **2. Plaintiff's Objections.** On June 20, 2013, plaintiff filed objections to the Report and
4 Recommendation, raising the same issues regarding Steps 1 through 4 as she had raised in her
5 opening brief (Dkt. 12) and in her reply brief (Dkt. 14). *See* Dkt. 17. On July 5, 2013, defendant
6 filed a response to the objections, addressing the issues raised in the objections. Dkt. 20.

7 The magistrate judge carefully and thoroughly analyzed the facts according to the proper
8 legal standard at Steps 1, 2, 3, and 4. The court concurs with the analysis of the magistrate judge.
9 Plaintiff's objections are without merit.

10 **3. Defendant's Objections.** On June 20, 2013, defendant filed objections to the Report
11 and Recommendation, contending that (1) the vocational expert explained the deviation between
12 her testimony and the Dictionary of Occupations Titles (DOT); (2) the ALJ relied on the
13 testimony of the vocational expert; and (3) plaintiff has not met her burden to show that any error
14 on the part of the ALJ was harmful. Dkt. 16. On July 3, 2013, plaintiff filed a response, arguing
15 that the decision of the ALJ did not recognize a conflict between the testimony of the vocational
16 expert and the DOT; that, as a result, the ALJ did not explain how the conflict should be
17 resolved; that the ALJ decision should not be rewritten by the court; and that, had the ALJ not
18 erred, the ALJ could have reasonably reached a different disability determination. Dkt. 18.

19 The record shows that the ALJ concluded that the vocational expert's testimony was
20 consistent with information contained in the DOT. That conclusion was incorrect. The ALJ
21 stated that, "[b]ased on the testimony of the vocational expert", plaintiff was capable of making a
22 successful adjustment to other work that existed in significant numbers in the national economy.
23 TR 23. *See* Dkt. 16, at 4. Not only did the ALJ err in concluding that the expert's testimony was
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1 consistent with the DOT, but, as a result, the ALJ failed to explain how the conflict between the
2 vocational expert's testimony and the DOT was resolved. This is not a harmless error. The
3 reviewing court is left to guess at how the ALJ would have resolved the conflict and how the
4 ALJ determined that plaintiff could perform work that exists in significant numbers in the
5 national economy. Defendant's objections are unpersuasive.

6 Accordingly, the Report and Recommendation of the Magistrate Judge (Dkt. 15) is
7 **ADOPTED**. This case is **REVERSED** and **REMANDED** pursuant to sentence four of 42
8 U.S.C. § 405(g) to the Commissioner for further consideration. This case is closed.

9 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
10 to any party appearing *pro se* at said party's last known address.

11 Dated this 8th day of July, 2013.

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14 ROBERT J. BRYAN
15 United States District Judge
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